

§ 123.45 Noncompliance and program reporting by the Director.

As of December 21, 2021 EPA must prepare public (quarterly and annual) reports as set forth here from information that is required to be submitted by NPDES-regulated facilities and the State Director.

(a) *NPDES noncompliance reports (NNCR)—quarterly.* EPA must produce an online report on a quarterly basis with the minimum content specified here. The Director must electronically submit timely, accurate, and complete data to EPA that allows EPA to prepare these quarterly NNCRs.

(1) *Content.* The NNCR must include the following information:

(i) A facility specific list of NPDES-regulated entities in violation, including non-POTWs, POTWs, Federal permittees, major facilities, and nonmajor facilities, as well as a list of CWA point sources that did not obtain NPDES permits authorizing discharges of pollutants to waters of the United States.

(ii) For each identified NPDES-regulated entity in violation of the Clean Water Act:

(A) The name, location, and permit number or other identification number, if a permit does not exist.

(B) Information describing identified violation(s) that occurred in that quarter, including the date(s) on which violation(s) started and ended (if applicable). Where applicable, the information must indicate the pipe, parameter, and the effluent limit(s) violated. Violations must be classified as Category I and II as described in paragraph (a)(2) of this section.

(C) The date(s) and type of formal enforcement and written informal enforcement action(s) taken by the Director to respond to violation(s), including any penalties assessed.

(D) The status of the violation(s) (*e.g.*, corrected or continuing, and the date that the violation(s) was resolved), which can be reported by linking violations to specific enforcement actions, or tracking noncompliance end dates.

(E) Any optional details that may help explain the instance(s) of noncompliance as provided by the Director or EPA.

(F) All violations must be reported in successive quarterly reports until the violation(s) is documented as being corrected (*i.e.*, the regulated entity is no longer in violation). After a violation is reported as corrected in the NNCR, that particular violation will not continue to appear in subsequent quarterly reports, although it will appear in the relevant annual report.

(G) If the permittee or discharger is in compliance with an enforcement order (*e.g.*, permittee is completing the necessary upgrades to its existing wastewater treatment system in accordance with the schedule in the enforcement order), and has no new, additional violation(s), the compliance status must be reported as “resolved pending” in the NNCR. The permittee/discharger will continue to be listed on the NNCR until the violation(s) is documented as being corrected.

(2) *Violation classifications.* A violation must be classified as “Category I Noncompliance” if one or more of the criteria set forth below are met.

(i) *Reporting violations.* These include failure to submit a complete, required report (*e.g.*, final compliance schedule progress report, discharge monitoring report, annual report) within 30 days after the date established in a permit, administrative or judicial order, or regulation. In addition, these also include any failure to comply with the reporting requirements at 40 CFR 122.41(l)(6).

(ii) *Compliance construction violations.* These include failure to start construction, complete construction, or achieve final compliance within 90 days after the date established in a permit, administrative or judicial order, or regulation.

(iii) *Effluent limits.* These include violations of interim or final effluent limits established in a permit, administrative or judicial enforcement order, or regulation that exceed the “Criteria for Noncompliance Reporting in the NPDES Program” in appendix A to § 123.45.

(iv) *Compliance schedule violations.* These include violations of any requirement or condition in permits, or administrative or judicial enforcement orders, excluding reporting violations,

compliance construction milestones and effluent limits.

(v) *Non-numeric effluent limit violations.* These include violations of non-numeric effluent limits (*e.g.*, violations of narrative permit requirements or requirements to implement best management practices) that caused or could cause water quality impacts. Examples of such impacts on water quality include, but are not limited to, unauthorized discharges that may have caused or contributed to exceedances in water quality standards, fish kills, oil sheens, beach closings, fishing bans, restrictions on designated uses, and unauthorized bypass or pass through or interference with the operations of a POTW (see 40 CFR 403.3).

(vi) *Other violations.* These include any violation or group of violations, which in the discretion of the Director or EPA, are considered to be of concern. These violations include repeat violations by a specific point source, geographic clusters of violations, corporations with violations at multiple facilities, or industrial sectors with identified patterns of violation that have a cumulative impact on water quality, but otherwise would not meet Category I criteria. EPA must determine whether to issue policy or guidance to provide more specificity on identifying these types of violations and how to report them.

(vii) All other types of noncompliance that do not meet the criteria for Category I Noncompliance must be classified as "Category II Noncompliance."

(3) EPA must provide an easy-to-use interface to facilitate public access, use, and understanding of the NNCR, including the ability to sort violations by duration, severity, frequency, detection method (*e.g.*, self-reported effluent, monitoring, inspection), flow and pollutant loadings, type of discharger, waterbody receiving the discharge, proximity to impaired waters, and category of violation (I or II). EPA must exclude from public release any confidential business information or enforcement-sensitive information associated with the NNCR.

(b) *NPDES noncompliance reports—annual summary (annual).* EPA must prepare annual public reports that provide

a summary of compliance monitoring and enforcement activities within each state, tribe, and territory, as well as summary information on violations identified in the four quarterly NNCRs for that federal fiscal year. EPA must provide these annual reports by no later than March 1st of the following year.

(1) *Facility types covered by reports.* EPA must produce, at a minimum, Annual Summary Reports for the following universes: Individually-permitted NPDES-regulated entities; all other NPDES-regulated entities that are not individually permitted; Clean Water Act point sources that had unauthorized discharge(s) of pollutants to waters of the US; and a combined report that includes totals across all three reports above. Individually-permitted facilities are defined in this subsection as those permits that are unique to the permittee, that include permitted effluent limits, and require the submission of discharge monitoring reports.

(2) *Content of reports.* Reports must include applicable data for NPDES-regulated entities:

- (i) The number of NPDES permittees;
- (ii) The number inspected by on-site inspections;
- (iii) The number reviewed in which permitted limits were compared to measured data to determine violations;
- (iv) The number evaluated by other, off-site compliance monitoring activities;
- (v) The number with any violations;
- (vi) The number with Category I violations;
- (vii) The number receiving paper or electronic written informal enforcement actions;
- (viii) The total number receiving formal enforcement actions with a compliance schedule;
- (ix) The total number receiving a penalty assessment;
- (x) The total amount of penalties assessed; and
- (xi) The number of permit modifications extending compliance deadlines more than one year.

(c) *Schedule for producing NNCR quarterly information.* (1) The Director has until 45 days from the end of the calendar quarter to update or correct

§ 123.45

NPDES data submissions in EPA's national NPDES data system for events that occurred within that calendar quarter covered by the NNCR.

(2) EPA must publish the NNCR in electronic form to be easily accessible and available to the public within two months after the end date of the calendar quarter:

EPA SCHEDULE FOR QUARTERLY NNCR

Calendar quarter	EPA NNCR publication date for calendar quarter
January, February, March	May 31.
April, May, June	August 31.
July, August, September	November 30.
October, November, and December	Last Day in February.

APPENDIX A TO § 123.45—CRITERIA FOR CATEGORY I NONCOMPLIANCE REPORTING IN THE NPDES PROGRAM

This appendix describes the criteria for reporting Category I violations of NPDES permit effluent limits in the NPDES non-compliance report (NNCR) as specified under paragraph (a)(2)(C) of this section. Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. As specified in paragraph (a)(2) of this section, there are two categories of noncompliance, and the table below indicates the thresholds for violations in Category I. An agency's decision as to what enforcement action, if any, should be taken in such cases, shall be based on an analysis of facts, legal requirements, policy, and guidance.

Violations of Permit Effluent Limits

The categorization of permit effluent limits depends upon the magnitude and/or frequency of the violation. Effluent violations shall be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Category I Violations of Monthly Average Permit Limits—Magnitude and Frequency

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six-month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants—TRC=1.4

Group II Pollutants—TRC=1.2

40 CFR Ch. I (7–1–18 Edition)

b. Reporting Criteria for Chronic Violations of Monthly Average Limits

Chronic violations must be reported in the NNCR if the monthly average permit limits are exceeded any four months in a six-month period. These criteria apply to all Group I and Group II pollutants.

Group I Pollutants—TRC=1.4

Oxygen Demand
 Biochemical Oxygen Demand
 Chemical Oxygen Demand
 Total Oxygen Demands
 Total Organic Carbon
 Other
 Solids
 Total Suspended Solids (Residues)
 Total Dissolved Solids (Residues)
 Other
 Nutrients
 Inorganic Phosphorus Compounds
 Inorganic Nitrogen Compounds
 Other
 Detergents and Oils
 MBAS
 NTA
 Oil and Grease
 Other detergents or algicides
 Minerals
 Calcium
 Chloride
 Fluoride
 Magnesium
 Sodium
 Potassium
 Sulfur
 Sulfate
 Total Alkalinity
 Total Hardness
 Other Minerals
 Metals
 Aluminum
 Cobalt
 Iron
 Vanadium

Group II Pollutants—TRC=1.2

Metals (all forms)
 Other metals not specifically listed under Group I
 Inorganic
 Cyanide
 Total Residual Chlorine
 Organics

All organics are Group II except those specifically listed under Group I.

[80 FR 64100, Oct. 22, 2015]